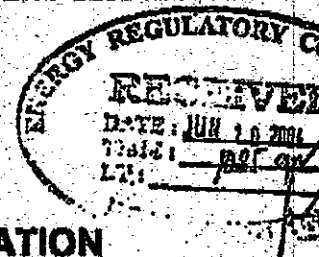


**IN THE MATTER OF THE PETITION
FOR THE AVAILMENTS FROM THE
UNIVERSAL CHARGE THE SHARE
FOR MISSIONARY ELECTRIFICATION.**

**National Power Corporation - Small
Power Utilities Group (NPC-SPUG),
Petitioner.**

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ERC Case No. 2002-185



MOTION FOR CLARIFICATION

The **POWER SECTOR ASSETS AND LIABILITIES AND MANAGEMENT CORPORATION (PSALM)**, by counsel, respectfully moves for the clarification of the Honorable Court's Decision dated June 26, 2003.

I.

ANTECEDENTS

In the Order dated December 20, 2002, the Honorable Commission provisionally approved the collection of P0.0168/kWh as petitioner NPC-SPUG's share from the Universal Charge for Missionary Electrification (UC-ME). In the Decision dated June 26, 2003, it approved the collection of an additional amount of P0.025 or a total of P0.0373/kWh.

The details of computation of the P0.0373/kWh approved for UC-ME is shown in Table 6 of the Decision and reproduced herein as follows:

Computation of Universal Charge for Missionary Electrification For 44 Prioritized Projects				
Phil. Projected Energy Sales Energy Sales-SPUG	kWh	PhP/kWh	OPEX	CAPEX
			CY 2003	Jul-Dec
			52,093,000,000	26,04
Luzon	429,376,000	3.7064	1,591,450,328	
Visayas	34,734,000	5.6404	195,913,654	
Mindanao	90,720,000	4.8024	435,673,728	
			2,223,037,707	
Allowable Cash Expenses (OPEX only)			2,966,590,000	
Estimated Levy/Subsidy Requirement			743,552,293	599.7
Estimated Levy/Subsidy Requirement (P/kWh)			0.0143	
Total Levy/Subsidy Requirement (P/kWh)				

Based on the above Table, the Honorable Commission had estimated the total levy/subsidy requirement in the amount of P1,343,312,293 or P1.34 Billion representing the sum of Operating Expenses (OPEX) and Capital Expenses (CAPEX) subsidies amounting to P743,552,293 and P599,760,000, respectively

As of May 15, 2004, the total reconciled UC-ME remittances from March 2003 to May 15, 2004 amounted to P1.173 Billion (Annex 1), for which disbursements had already been made, net of P20,000.00 maintaining balance for the UC-ME Special Trust Fund (STF). PSALM will remit the remaining amount of P170,046,738.40 on the succeeding disbursement. Once the amount of P1.34 Billion has been fully remitted to petitioner NPC-SPUG and in the absence of a new Decision from the Honorable Commission, PSALM will not make further remittances to petitioner NPC-SPUG.

II.

ISSUES FOR CLARIFICATION

- A. Whether PSALM should continue to disburse UC-ME to petitioner NPC-SPUG in excess of the estimated levy/subsidy requirement of P1.34 Billion.
- B. Whether PSALM is authorized to disburse the corresponding interest income earnings of the respective STFs to the beneficiaries without a subsequent order from the Honorable Commission?

PSALM seeks clarification from the Honorable Commission primarily on the disbursement to petitioner NPC-SPUG during the interim when it has disbursed P1.34 Billion and before the issuance of a new order or decision for UC-ME for year 2004. On this issue, petitioner NPC-SPUG and PSALM have taken opposite positions. It is the position of petitioner NPC-SPUG that disbursement of the UC-ME computed based on the CY 2003 avallment amounting to P0.0373 per kw/hr should continue despite the fact that it has received the estimated levy/subsidy requirement given the continuous collection by the collecting entities from end users and remittance to PSALM. On the other hand, PSALM believes that it should disburse up to P1.34 Billion only, corresponding to petitioner NPC-SPUG entitlement to the Universal Charge for CY 2003.

In addition, PSALM is requesting further clarification on the issue of interest of the respective STFs.

III.

DISCUSSION

A.

Disbursement in Excess of the Estimated Levy/Subsidy Requirement

Although we are seeking the Honorable Commission's guidance on the foregoing issues, PSALM humbly submits the following legal basis for the position it has taken.

continuing

First, Disbursement of universal charge to beneficiaries must be for definite period.

agree

the issue is hard to interpret EPI's absence of a decision for 2004 VC-PE

Rule 18, Section 4 (a) (ii) (3) of the Implementing Rules and Regulation (IRR) of Republic Act No. 9138 (the Electric Power Industry Reform Act of 2001) (EPIRA) provides that the order or decision of the Honorable Commission, petitions against the universal charge must prescribe, among others, "the period of disbursement by each of the beneficiaries." Although the June 26, 2003 Decision of the Honorable Commission did not specify the period of disbursement to petitioner NPC-SPUG, said provision nonetheless implies that disbursement must be for a limited time. The absence of fixed cut-off time for disbursement is not a hindrance for PSALM to perform its duties under the EPIRA and the IRR as it can able to determine the period of disbursement based on the estimated subsidy/levy requirement approved by the Honorable Commission. In other words, if the estimated levy or subsidy requirement has been fully disbursed, PSALM

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obligation ceases. There is no need for a cease and desist order from Honorable Commission, as suggested by petitioner NPC-SPUG, because extent of such disbursement is clear from the body of the June 26, 2003 Decision

again

Second. PSALM is mandated to retain excess collection to be used in event of shortfall.

not the issue

Section 6 (f) of Rule 18 of the IRR provides that "[I]n the event that the total amount collected for the Universal Charge is greater than the actual avallment against the Universal Charge, the PSALM shall retain the balance within the STF to pay for periods where a shortfall occurs." In addition, Section 7 (e) of the Guidelines and Procedures Governing Remittances and Disbursements of the Universal Charge (Guidelines) also provides that "[I]n the event that the balance of any STF Account for any calendar month exceeds the amount of the avallment request or requests submitted by the Beneficiary or Beneficiaries of such account for such month, PSALM shall retain the balance within the STF Accounts to pay for periods where a shortfall occurs."

The above provisions give PSALM the authority to retain excess collection to compensate for instances when the actual collection is lower than the estimated collection. If disbursement to petitioner NPC-SPUG would continue in excess of the approved estimated levy or subsidy requirement, then there would never be an instance when there would be excess collection that could be used where shortfall occurs. Thus, these provisions contradict the position of petitioner NPC.

SPUG that since the collection and remittance of UC-ME is continuous the PSALM should also continue its disbursement to petitioner NPC-SPUG.

agreed
only a petition has been submitted to the IRR in 2004

Corollary to the above, these provisions also imply two (2) things: (a) the requests for disbursement must have a ceiling and the ceiling is the approved levy or subsidy requirement and (b) that disbursement is not continuous despite continuing UC-ME collections and remittances.

Third. The position of petitioner NPC-SPUG would render nugatory certain provisions of the IRR.

Section 4 (b) of Rule 18 of the IRR provides that petitions for availment under the Universal Charge must be filed yearly or on or before March 15 of every year. Failure to submit the petition within the specified period shall result in the forfeiture of such petition for the period in question (*ibid.*, Section 4 [f]). Although petitioner NPC-SPUG has filed a petition for availment for CY 2004, interpretation that PSALM should continue disbursing until the succeeding order rendered, if adopted, would render nugatory the forfeiture of universal charge in the event of non-filing as a beneficiary would continue to receive disbursement when its share should have been forfeited in the absence of a new UC-ME order that supersedes the previous one.

Fourth. The Guidelines clearly spell out that disbursements must be strict in accordance with the Honorable Commission's order or decision.

Consider the following provisions:

1. Section 1 (d) states that the disbursement of the Universal Charge by PSALM to the Beneficiaries must be "in accordance with their entitlements to be determined and approved by the ERC."

2. The last paragraph of Section 3.02 also states that the Petitioners shall be deemed the Beneficiaries with respect to their corresponding STFs "or upon and to the extent of the approval by the ERC of their petition for avallment of the Universal Charge."

3. Section 8 requires PSALM to maintain records and reconcile the avallments that are "due and paid" emphasizing the requirement on the party, PSALM not to simply disburse any and all amount that enters the STFs, but to ensure that disbursement must be strictly in accordance with the order or decision of the Honorable Commission.

Lastly, PSALM believes that strict interpretation of the pertinent laws, rules and orders are consistent with the fiduciary nature of its responsibilities as administrator of the Universal Charge.

That the approved levy or subsidy requirement of P1.34 Billion is only the estimate based on projected sales, hence, there can be under-recovery (or over recovery too) can be addressed by true-up adjustments in accordance with rules of the Honorable Commission (IRR, Rule 18, Section 4 (f)).

not in flexibility case

The concern of petitioner NPC-SPUG that in the extreme case that the Honorable Commission's decision on the CY 2004 UC-ME petition is not in

during the year and PSALM limits its disbursement to P1.34 B, this would imply that no funds would be available for missionary electrification in 2004 is not quite accurate. It is clear in Section 70 of the EPIRA and Section 4 of Rule 13 of the IRR, that the UC-ME is only one of the sources of the funds for missionary electrification. The Honorable Commission, in the June 26, 2003 Decision categorically stated that petitioner NPC-SPUG's proposal to use the UC-ME as lone sole source of capital "runs counter to the established utility ratemaking and accounting principles" and advised it "to seek out alternative financing (for example, loans) for most of their projects to allow a more rapid missionary electrification and a much lower universal charge." We reiterate the Honorable Commission's admonition in the said Decision: "[g]iven the nature of rate base on projections and the proposal at this time to rely on the UC-ME as the sole source of capital, the importance of monitoring the performance of NPC-SPUG for its utilization of the amounts availed of for the purpose cannot be over emphasized."

B.

Interest Earned on UC Remittance Deposits

For CY 2003, the total UC remittance deposits earned interest income net of withholding tax amounting to P2.5 Million. According to Section 4.02 (e) of the Guidelines, "[a]ny interest earned on monies in a STF Account shall form part of such STF and shall be used for the same specified purpose." Although the Judge ^{26,} 2003 Decision is silent on the release of interest, PSALM is requesting clarification from the Honorable Commission whether PSALM is authorized to disburse the corresponding interest income earnings of the respective STFs to the

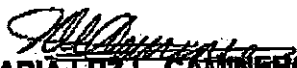
beneficiaries, and if so, whether this amount should be deducted from the
disbursement or whether this should be over and above the estimated levy/
subsidy requirement.


PRAYER

WHEREFORE, It is respectfully prayed that the Motion for Clarification
GRANTED and that an Order be issued resolving the issues on the disbursement^{ent}
of (1) UC-ME in excess of the estimated levy or subsidy requirement and (2)
interest on the UC-ME for CY 2003.

Respectfully submitted.

Makati City, for Pasig City, June 9, 2004.


MARIA LUZ L. CAMINERO
Vice President-General Counsel
Attorney's Roll No. 35714
IBP No. 590825 9/11/03 Quezon C


CECILIO B. GELLADA, JR.
Department Manager
Attorney's Roll No. 30354
IBP No. 618706 8-02-04 Quezon C


MARIA BELEN P. MONTES-NERJ
Attorney's Roll No. 37737
IBP No. 578039 1-22-03 Quezon

**POWER SECTOR ASSETS AND LIABIL
MANAGEMENT CORPORATION**
2ND Floor, SGV II Building
Ayala Avenue, Makati City

NOTICE OF HEARING

**The Executive Director
ENERGY REGULATORY COMMISSION**

**Atty. Rainier B. Butalid 23/99
Counsel for Petitioner NPC-SPUG
NATIONAL POWER CORPORATION
Quezon Road corner BIR Road
Diliman, Quezon City**

GREETINGS:

Please submit the foregoing Motion for Clarification for the consideration of the Honorable Commission immediately upon receipt without need of arguments.

Maria Belen P. Montes-Ne
MARIA BELEN P. MONTES-NE

EXPLANATION

Copy of the Motion for Clarification was served on petitioner NPC-SPUG registered mail due to distance and time constraints.

Maria Belen P. Montes-Ne
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